

Ad Hoc Committee on Garnishments

Report to the
State Courts Administrator
and the
Supreme Court of Missouri

submitted
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AD HOC COMMITTEE ON GARNISHMENTS

Background

August 24, 2011, Greg Linhares, State Courts Administrator, appointed an Ad Hoc Committee on Garnishments to review the garnishment process in Missouri, including statutes and rules, and to make recommendations, if any, to improve the process.

Judge Karl DeMarce was appointed chair of the committee. The remaining members were judges, court clerks, and attorneys familiar with the garnishment process. The full roster is attached. The committee was staffed by the Office of State Courts Administrator. The committee met throughout the remainder of 2011 and 2012 by video conference.

Garnishments take up a considerable amount of clerk resources. In FY2011 250,212 garnishments and executions were issued. That equates to approximately 140 clerk-years worth of time statewide, just to process garnishments. The clerks have to issue the garnishment, prepare the summons, receipt and disburse the money.

The committee did an overall review of the garnishment process including, Rules 76.075 and 90, and Section 408.040 RSMo, Section 488.012 RSMo, and Chapter 525 RSMo. In addition, the committee reviewed garnishment statutes and rules from the surrounding states.

The committee's recommendations include:

1. Establish a \$20 garnishment fee.
2. Authorize service by certified mail.
3. Authorize a continuous wage garnishment.
4. Authorize payment of funds to the creditor's attorney instead of to the court.
5. Require a reporting of the judgment balance to court every six months, where either a continuous wage garnishment or a direct payment of garnished funds to the attorney is in effect.
6. Clarify the exemption process for garnishments.
7. Change the requirements on the content in the interrogatories and the filing requirements so that only a certificate of service is filed unless the interrogatories or answers are put at issue.
8. Set a fixed amount for the allowance by garnishee.
9. Make the process for writ of sequestration the same as writ of garnishment.
10. Set out a procedure for quashing a writ.

The committee's recommendations follow. The committee comments are only provided as a summary and not intended as part of the rule or statute.

Proposed Statutory Changes

Judgment Balance

Committee Comments: Defines “judgment balance” and establishes the order for application of garnishment payments. § 408.040 currently requires interest to accrue on the entire judgment balance even if it contains prejudgment interest. See Good Hope Missionary Baptist Church v. St. Louis Alarm Monitoring Co., Inc., 358 S.W.3d 528 (Mo. App. E.D. 2012); Boatman’s First Nat’l Bank of Kansas City v. Bogina Petroleum Engineers, 794 S.W.2d 703 (Mo. App. W.D. 1990).

The current approved garnishment forms at best confuse this issue and at worst contradict Missouri law, resulting in inconsistent interpretation throughout the state. One of the guiding principles behind the Committee’s recommendations is to clarify garnishment issues and thus create statewide consistency. Those same concerns require a directive with respect to the manner and order in which post judgment payments are applied.

The Committee chose to apply payments first to post judgment costs, then post judgment interest and finally to the judgment balance to simplify the process and apply payments in accordance with common accounting and lending practices. Promissory notes, credit card agreements and the like typically require payment to be applied to interest first. A judgment creditor is in essence an involuntary lender and should be treated at least as well as voluntary lenders. Arguably, they should be treated more favorably since post judgment interest “is awarded on the theory that it is a penalty for delayed payment of the judgment.” Lindquist v. Mid-America Orthopedic Surgery, Inc., 325 S.W.3d 461, 465 (Mo. App. E.D. 2010). The Eastern District upheld the application of payments to interest first in Lindquist, *supra*.

§ 408.040. Interest on judgment, how regulated—prejudgment interest allowed when, procedure

1. Judgments shall accrue interest on the judgment balance as set forth in this section. The judgment balance is defined as the total amount of the judgment awarded on the day judgment is entered including, but not limited to, principal, prejudgment interest, and all costs and fees. Post judgment payments or credits shall be applied first to post judgment costs, then to post judgment interest and then to the judgment balance.

[1] **2.** In all nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction be made by payment, accord or sale of property; all such judgments and order for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and order for money shall bear nine percent per annum until satisfaction made as aforesaid.

[2] **3.** Notwithstanding the provision of subsection [1] 2 of this section, in tort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date of judgment is entered by the trial court until full satisfaction. All such judgments and orders for money shall bear a per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus five percent, until full satisfaction is made. The judgment shall state the applicable interest rate, which shall not vary once entered. In tort actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a claim, to the party, parties or their representatives, and to such party's liability insurer if known to the claimant, and the amount of the judgment or order exceeds the demand for payment or offer of settlement, then prejudgment interest shall be awarded, calculated from a date ninety days after the demand or offer was received, as shown by the certified mail return receipt, or from the date the demand or offer was rejected without counter offer, whichever is earlier. In order to qualify as a demand or offer pursuant to this section, such demand must:

- (1) Be in writing and sent by certified mail return receipt requested; and
- (2) Be accompanied by an affidavit of the claimant describing the nature of the claim, the nature of any injuries claimed and a general computation of any category of damages sought by the claimant with supporting documentation, if any is reasonably available; and
- (3) For wrongful death, personal injury, and bodily injury claims, be accompanied by a list of the names and addresses of medical providers who have provided treatment to the claimant or decedent for such injuries, copies of all reasonably available medical bills, a list of employer if the claimant is seeking damages for loss of wages or earning, and written authorizations sufficient to allow the party, its representatives, and liability insurer if known to the claimant to obtain records from all employer and medical care providers; and
- (4) Reference this section and be left open for ninety days.

Unless the parties agree in writing to a longer period of time, if the claimant fails to file a cause of action in circuit court prior to a date one hundred twenty days after the demand or offer was received, then the court shall not award prejudgment interest to the claimant. If the claimant is a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably appears to be qualified to act as next friend or conservator or personal representative. If the claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to section 537.080, RSMo, to make claim for the death. Nothing contained herein shall limit the right of a claimant, in actions other than tort actions, to recover prejudgment interest as otherwise provided by law or contract

[3] **4.** In tort actions, a judgment for prejudgment interest awarded pursuant to this subsection should bear interest as a per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus three percent. The judgment shall state the applicable interest rate, which shall not vary once entered.

Garnishment Fee

Committee Comments: There was committee consensus to establish a \$20 filing fee for the issuance of each writ of garnishment; however, there was not consensus as to the disbursement of the fee. Two options are presented for consideration.

488.XXX

- 1. The clerk of each court of this state shall collect from the filing party twenty dollars for each issuance of a writ of execution or garnishment unless the filing party shall have been granted leave to proceed in forma pauperis at any stage of the proceedings or the filing party is not required to pay fees by law. The circuit clerk shall add said amount to the bill of costs in the case, unless otherwise ordered by the court.**
- 2. Ten dollars of the fee collected pursuant to this section shall be payable to the clerk of the circuit court of the county from which such fee was collected, or to such person as is designated by local circuit court rule as treasurer of the fund established by section 488.5025, and said fund shall be applied and expended under the direction and order of the court en banc of any such county to be utilized by the court to improve, maintain, and enhance the ability to collect and manage moneys assessed or received by the courts, to improve case processing, to enhance court security, to support preservation of the record, or to improve the administration of justice. Ten dollars of the fee collected pursuant to this section shall be payable to the director of revenue, to be deposited to the general revenue fund.**
- 3. If the filing party shall have been granted leave to proceed in forma pauperis at any stage of the proceeding or if the filing party is not required to pay fees by law, all court costs which would otherwise be assessed, including the filing fee for the writ of execution or garnishment, shall be added as costs owed to the court to be collected under the execution or garnishment.**

Option 2

488.XXX

- 1. The clerk of each court of this state shall collect from the filing party twenty dollars for each issuance of a writ of execution or garnishment, unless the filing party shall have been granted leave to proceed in forma pauperis at any stage of the proceedings or the filing party is not required to pay fees by law. The circuit clerk shall add said amount to the bill of costs in the case, unless otherwise ordered by the court.**
- 2. Ten dollars of the fee collected pursuant to this section shall be payable to the county treasury, to be deposited to the county general revenue fund. Ten dollars of the fee collected pursuant to this section shall be payable to the director of revenue, to be deposited to the general revenue fund.**

3. If the filing party shall have been granted leave to proceed in forma pauperis at any stage of the proceeding or if the filing party is not required to pay fees by law, all court costs which would otherwise be assessed, including the filing fee for the writ of execution or garnishment, shall be added as costs owed to the court to be collected under the execution or garnishment.

Service of Garnishment

Committee Comments: Provides that garnishees may be served by certified mail and that the garnishor is responsible for obtaining service.

§ 525.020. Garnishees summoned, how

Upon receipt of the garnishment application, the clerk shall process the application, issue the writ, and return the garnishment to the garnishor. The garnishor shall be responsible for obtaining service upon the garnishee of the summons, application and order of execution or garnishment. When a fieri facias shall be issued and placed in the hands of an officer for collection, it shall be the duty of the officer, when directed by the plaintiff, his agent or attorney, to summon garnishees, and with like effect as in case of an original attachment. The service of garnishment in such case, and the subsequent proceedings against and in behalf of the garnishee, shall be the same as in the case of garnishment under an attachment. Alternatively, the garnishor may obtain service upon the garnishee by certified mail. In such cases, it shall be the duty of the garnishor to send the summons and writ by certified mail, return receipt requested, to the garnishee; or if the garnishee is a corporation, to the person described in section 525.050. The garnishor shall thereafter file with the clerk of the court issuing the order the return receipt signed by the garnishee. When service on the garnishee is obtained by certified mail, no subsequent proceeding against the garnishee may be undertaken unless the party filing the garnishment has filed the signed return receipt with the court. All sums paid on behalf of the garnishor to the United States Postal Service or a private mail provider for certified mail shall be includable as post-judgment costs.

Within five days of notice of service upon the garnishee, the garnishor shall serve a copy of the summons and writ on the judgment debtor. The writ shall be served by delivering it to the judgment debtor as provided in supreme court rule or by mailing the documents to the debtor's last known address. Service by mail shall be complete upon mailing. At the time of mailing, a certificate of service shall be filed with the court. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the documents, and the signature of the serving party or attorney.

Garnishment Priority

Committee Comments: Establishes the priority among garnishments. The committee believes this new subsection 2 to be a codification of existing case law.

§ 525.040. Effect of notice of garnishment—Priority

1. Notice of garnishment, served as provided in sections 525.010 to 525.480 shall have the effect of attaching all personal property, money, rights, credits, bonds, bills, notes, drafts, checks or other chooses in action of the defendant in the garnishee's possession or charge, or under his control at the time of the service of the garnishment, or which may come into his possession or charge, or under his control, or be owing by him, between that time and the time of filing his answer, **or in the case of a continuous wage garnishment, until the judgment is paid in full, or until the employment relationship is terminated, whichever occurs first**; but he shall not be liable to a judgment in money on account of such bonds, bills, notes, drafts, checks or other choses in action, unless the same shall have been converted into money since the garnishment, or he fail, in such time as the court may prescribe, to deliver them into court, or to the sheriff or other person designated by the court.

2. Writs of garnishment which would otherwise have equal priority shall have priority according to the date of service on the garnishee. If an employee's wages have been attached by more than one writ of garnishment, the employer must inform the inferior garnishor of the existence and case number of all senior garnishments.

Continuous Wage Garnishment

Committee Comments: Creates an option that garnishment funds may be paid directly to the attorney. Removing garnishment payments from the court system would significantly reduce the workload imposed on our circuit clerks. Routing garnishment payments directly to attorneys is a common practice. Members of the Committee are specifically aware of the following states that do so:

- Kentucky—CR Rule 69.02
- Illinois—735 ILCS 5/12-808
- Arkansas—No explicit citation available, but known from experience
- Arizona—A.R.S. § 12-1598.10
- New Mexico—NMRA, Rule 1-065.2

The overwhelming majority of the garnishments filed in this state are done so by collection firms who have high volume practices that require efficiency and professionalism. These attorneys report to sophisticated clients who closely monitor all remittances for accuracy thus greatly reducing the risk of inappropriate attorney conduct. While admittedly there is still a risk of negligent or intentional misconduct, attorneys would be subject to civil remedies as well as attorney discipline. If this procedure results in discovering and disciplining attorneys who misappropriate funds and thus preventing other undiscovered misconduct, it could be advantageous to our judicial system. Rules and procedures should be created for attorneys, parties and courts to follow.

§ 525.070. Garnishee may discharge himself, how

Whenever any property, effects, money or debts, belonging or owing to the defendant, shall be confessed, or found by the court or jury, to be in the hands of the garnishee, the garnishee may, at any time before final judgment, discharge himself, by paying or delivering the same, or so much thereof as the court shall order, to the sheriff, [or] to the court, **or when applicable, to the attorney for the party on whose behalf the order of garnishment issued,** from all further liability on account of the property, money or debts so paid or delivered.

§ 525.080. Delivery of property, payment of debt, or giving bond by garnishee—property protected from garnishment, delivery not required

1. If it appear that a garnishee, at or after his or her garnishment, was possessed of any property of the defendant, or was indebted to him, the court, or judge in vacation, may order the delivery of such property, or the payment of the amount owing by the garnishee, to the sheriff, [or] into court, **or to the attorney for the party on whose behalf the order of garnishment issued,** at such time as the court may direct; or may permit the garnishee to retain the same upon his or her executing a bond to the plaintiff, with security, approved by the court, to the effect that the property shall be forthcoming,

or the amount paid, as the court may direct. Upon a breach of the obligation of such bond, the plaintiff may proceed against the obligors therein, in the manner prescribed in the case of a delivery bond given to the sheriff.

2. Notwithstanding subsection 1 of this section, when property is protected from garnishment by state or federal law including but not limited to federal restrictions on the garnishment of earnings in Title 15, U.S.C. Section 1671 to 1677 and Old Age, Survivors and Disability Insurance benefits as provided in Title 42, U.S.C. Section 407, such property need not be delivered to the court, or to any other person, by the garnishee to the extent such protection or preemption is applicable.

Garnishee Allowance

Committee Comments: Establishes a standard allowance for garnishees.

§ 525.230. Allowance in such case to garnishee

[1.] The [court shall make the] garnishee [a reasonable allowance] may deduct a one-time sum not to exceed twenty dollars, or the fee previously agree upon between the garnishee and judgment debtor where the garnishee is a financial institution, for his or her trouble and expenses in answering the interrogatories and withholding the funds, to be [paid out of the funds or proceeds of the property or effects confessed in his or her hands] withheld from any funds garnished, in addition to the moneys withheld to satisfy the court-ordered judgment. Such fee shall not be a credit against the court-ordered judgment and shall be collected first. The garnishee may file a motion with the court for additional costs, including attorney's fees, reasonably incurred in answering the interrogatories in which case the court may make such award as it deems reasonable. The motion shall be filed on or before the date the garnishee makes payment, or delivers property subject to garnishment into court.

[2. The court also shall allow the garnishee, in addition to the reasonable allowance for his or her trouble and expenses in answering the interrogatories, to collect an administrative fee consisting of the greater of eight dollars or two percent of the amount required to be deducted by any court-ordered garnishment or series of garnishments arising out of the same judgment debt. Such fee shall be for the trouble and expenses in administering the notice of garnishment and paying over any garnished funds available to the court. The fee shall be withheld by the employer from the employee, or by any other garnishee from any fund garnished, in addition to the moneys withheld to satisfy the court-ordered judgment. Such fee shall not be a credit against the court-ordered judgment and shall be collected first.]

Sequestration

Committee Comments: Eliminates a separate process for writ of sequestration.

§ 525.310. Compensation of state and municipal employees subject to writ of garnishment [sequestration]

1. The provisions of this statute constitute a waiver of sovereign immunity with respect to garnishment of the pay of state, municipal or other political subdivision employees. The state, municipal or other political subdivision employer served with a garnishment shall have the same duties and obligations as those imposed upon a private employer when served with a garnishment.

2. Pay of any officer, appointee or employee of the state of Missouri, or any municipal corporation or other political subdivision of the state, shall be subject to garnishment to the same extent as in any other garnishment. All garnishments against such employees shall proceed in the same manner as any other garnishment, except as provided in subsection 3 of this statute.

3. Service of legal process to which a department, municipal corporation, or other political subdivision of the state is subject under this section may be accomplished by certified mail, return receipt requested, or by personal service, upon—
(a) the appropriate agent designed for receipt of such service of process; or
(b) the head of such department, municipal corporation, or other political subdivision of the state, if no agent has been so designated.

[1. When a judgment has been rendered against an officer, appointee or employee of the state of Missouri, or any municipal corporation or other political subdivision of the state, the judgment creditor, or his attorney or agent, may file in the office of the clerk of the court before whom the judgment was rendered, an application setting forth such facts, and that the judgment debtor is employed by the state, or a municipal corporation or other political subdivision of the state, with the name of the department of state or the municipal corporation or other political subdivision of the state which employs the judgment debtor, and the name of the treasurer, or the name and title of the paying, disbursing or auditing officer of the state, municipal corporation or other political subdivision of the state, charged with the duty of payment or audit of such salary, wages, fees or earnings of such employee, and upon the filing of such application the clerk shall issue a writ of sequestration directed to the sheriff or other officer authorized to execute writs in the county in which such paying, disbursing or auditing officer may be found and the sheriff or other officer to whom the writ is directed shall serve a true copy thereof upon such paying, disbursing or auditing officer named therein, which shall have the effect of attaching any and all salary, wages, fees or earnings of the judgment debtor,

which are not made exempt by virtue of the exemption statutes of this state and are not in excess of the amount due on the judgment and costs, then due and payable, from the date of the writ to the return day thereof.

2. The paying, disbursing or auditing officer charged with the duty of payment or audit of the salary, wages, fees or earnings of the judgment debtor shall deliver to the sheriff or officer serving the writ the amount, not to exceed the amount due upon the judgment and costs, of the salary, wages, fees or earnings of the judgment debtor not made exempt by virtue of the exemption statutes of this state, as the same shall become due to the judgment debtor. The paying, disbursing or auditing officer shall pay to the judgment debtor the remaining portion of his salary, wages, fees or earnings, as the same shall become due to the judgment debtor. The sheriff, or officer serving the writ, shall provide to the paying, disbursing or auditing officer along with the writ sufficient information to compute the amount which shall be delivered to the sheriff or officer serving the writ. Neither the state, municipal corporation or other political subdivision of the state, nor the paying, disbursing or auditing officer shall be liable for the payment of any amount above the amount delivered to the sheriff or officer serving the writ if the computation of the amount delivered is in accordance with the information provided with the writ.

3. The sheriff or officer serving such writ shall endorse thereon the day and date he received the same, and upon receiving any amount in connection with the writ, shall issue his receipt to such paying, disbursing or auditing officer therefore. All amounts delivered to the sheriff, or officer serving said writ, in connection with the writ, or so much thereof as shall be necessary therefor, shall be applied to the payment of the judgment debt, interest and costs in the same manner as in the case of garnishment under execution. The sheriff or other officer serving the writ shall make his return to the writ showing the manner of serving the same, and he shall be allowed the same fees therefore as provided for levy of execution, and the writ shall be returnable in the same manner as the execution issued out of the court in which the judgment was rendered. Nothing in this section shall deprive the judgment debtor of any exemptions to which he may be entitled under the exemption laws of this state, and the same may be claimed by him to the sheriff or other officer serving the writ at any time on or before the return day of the writ in the manner provided under the exemption laws of this state it shall be the duty of such sheriff or other officer serving the writ, at the time of the service thereof, to apprise the judgment debtor of his exemption rights, either in person or by registered letter directed to the judgment debtor to his last known address.]

Proposed Supreme Court Rule Changes

Executions

Committee Comments: Makes the Rule applicable only to executions. Garnishments are addressed in new Rules 90.03(c) and 90.035. This change is recommended to clarify the Rules. It appeared to the Committee that, although case law made the requirements of this Rule 76.075 applicable to executions and garnishments alike, the requirements of this Rule (which appears within a set of Rules applicable only to executions) were not being applied to garnishment proceedings in all jurisdictions.

Rule 76.075. Exemptions

(a) **The requirements contained within this Rule are applicable exclusively to writs of execution.** Within three days after an officer has levied an execution, the officer shall notify the person against whom the execution has issued that an execution has been levied, that certain property, if any, is exempt under sections 513.430 and sections 513.440, RSMo, and that the person has the right to hold the property as exempt from attachment and execution. The officer shall also generally state that there are certain exemptions under state and federal law that the judgment debtor may be able to claim with respect to the property levied upon and describe the procedure for claiming the property as exempt. The notice shall also inform the person against whom the execution issues of the manner in which the person may obtain a specific description of the property upon which the levy was made. The notice may be served in the same manner as a summons or by mailing the notice to the judgment debtor at the debtor's last known address by regular mail. Service by mail shall be complete upon mailing.

(b) The judgment debtor may claim any exemption by filing a verified request with the levying officer within twenty days after notice of the levy. Any exemption allowed by federal law may be claimed at any time prior to the sale of property or disbursement of funds. Upon receipt of a verified request, the levying officer shall notify the party requesting the execution forthwith that a claim of exemption has been filed. If the levy is in the form of a garnishment upon the judgment debtor's wages, no such notification is required. The party requesting the execution may object to any claim for exemption within ten days of the filing of the verified request by filing a request for court review.

(c) If a request for court review is not timely filed, the levying officer shall release from execution the items claimed as exempt by the judgment debtor. Regardless of whether a request for court review is timely filed and where the property involves a garnishment upon the judgment debtor's wages, the levying officer shall release from execution the items claimed as exempt by the judgment debtor to the extent required by law at the time the claim for exemption is filed. If a request for court review is timely filed and the property does not involve a garnishment upon the judgment debtor's wages, the exemption claim shall first be reviewed and determined by the court before the levying officer shall release the items claimed as exempt. Any hearing required by the

court shall be expedited, shall be held not later than thirty days after the filing of the request for court review, and shall be held upon not less than three days' notice of the hearing to all parties in interest.

Continuous Wage Garnishment

Committee Comments: Establishes a continuous wage garnishment.

Rule 90.01. Definitions

In this Rule 90:

- (a) a "garnishor" is a judgment creditor;
- (b) a "debtor" is a judgment debtor'
- (c) a "garnishee" is the person summoned as garnishee in the writ of garnishment or levy;
- (d) "Property subject to garnishment" is all goods, personal property, money, credits, bonds, bills, notes, checks, choses in action, or other effects of debtor and all debts owed to debtor. "Property subject to garnishment" does not include funds of the debtor on deposit with a bank or other financial institution in an account in which all funds are:
 - (1) Deposited electronically on a recurring basis, and
 - (2) Reasonably identified as funds exempt from garnishment pursuant to section 513.430.1(10)(a), (b), or (c), RSMo.
- (e) **"Continuous wage garnishment" is the garnishment of earnings, as defined in section 525.030, RSMo, that does not have a return date and instead remains in effect until the judgment is paid in full, or until the employment relationship is terminated, whichever occurs first.**

Rule 90.02. Request for issuance of writ of garnishment

The clerk of the court that entered the judgment shall issue a writ of garnishment if the garnishor filed a written request stating:

- (a) That the judgment has been entered against the debtor and remains unsatisfied;
- (b) The [amount of the judgment] **judgment balance, as defined in section 408.040, RSMo,** and the amount remaining unpaid;
- (c) That the garnishor knows or has good reason to believe that the garnishee is indebted to debtor, that the garnishee is obligated to make periodic payments to debtor, or that the garnishee has control or custody of property belonging to debtor; and
- (d) The requested return date of the writ, which shall be either 30, 60, 120, 150, or 180 days after the filing of the request for the writ, **or alternatively, that a continuous wage garnishment is requested.**

[If a garnishor so requests, the clerk shall issue a writ of garnishment and summons when an attachment or execution is issued.] **Upon receipt of the garnishment application,**

the clerk shall process the application, issue the writ, and return the garnishment to the requesting party, who shall serve the garnishment on the garnishee.

Service

Committee Comments: Provides that garnissees may be served by certified mail and that the garnishor is responsible for obtaining service.

Rule 90.03. Service on Garnishee—Return of Service—Return Date—Notice to Judgment Debtor—Service of Subsequent Pleadings and Papers

(a) The garnishee shall be served with summons and the writ of garnishment. Service shall be as provided in Rule 54.13 **or subsection (b) of this rule.** In addition, service may be made upon an employee of the garnishee designated to receive service or upon the paying, disbursing or auditing officer of the garnishee. Return of service shall be made as provided in Rule 54.20 **or subsection (b) of this rule.** The return date of the writ of garnishment, if applicable, shall be set forth in the summons.

(b) **When the summons and writ of garnishment are returned to the garnishor for service, the garnishor may choose to serve the documents upon the garnishee by certified mail. In such cases, it shall be the duty of the garnishor to send the summons and writ by certified mail, return receipt requested, to the garnishee; or if the garnishee is a corporation, to the person described in Rule 54.13(b)(3). The garnishor shall thereafter file with the clerk of the court issuing the writ the return receipt signed by the garnishee or its agent. When service on the garnishee is obtained by certified mail, no subsequent proceeding against the garnishee may be undertaken unless the garnishor has filed the signed return receipt with the court.**
All sums paid on behalf of the garnishor to the United States Postal Service or a private mail provider for certified mail shall be includable as post-judgment costs.

(c) **Within five days of notice of service upon the garnishee, the garnishor shall serve a copy of the summons and writ on the judgment debtor. The writ shall be served by delivering it to the judgment debtor as provided in Rule 43.01(c) or by mailing the documents to the debtor's last known address. Service by mail shall be complete upon mailing. At the time of mailing, a certificate of service shall be filed with the court. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the documents, and the signature of the serving party or attorney.**

(d) [(b)] All pleading and papers subsequent to service of the summons and writ of garnishment shall be served as provided in Rule 43.01.

Exemptions

Committee Comments: Sets out the requirement for exemptions for garnishments.

New Rule 90.035. Exemptions

- (a) Every writ of garnishment shall have clearly and legibly printed thereon a notice to the person against whom the garnishment has issued that a garnishment has been levied, and that certain funds may be exempt under sections 513.430 and 513.440, RSMo, and that the person has the right to hold the funds as exempt from garnishment. The notice shall also generally state that there are certain exemptions under state and federal law that the judgment debtor may be able to claim with respect to the funds levied upon and describe the procedure for claiming the funds as exempt.**
- (b) The judgment debtor may claim any exemption by filing and serving a verified request within twenty days after being served with the garnishment. The party requesting the garnishment may object to any claim for exemption within twenty days of the filing of the verified request by filing a request for court review. If a request for court review is not timely filed, the garnishee shall release from garnishment the funds claimed as exempt by the judgment debtor, or, in the event any such exempt funds shall have been previously paid to the court or the garnishor, such exempt funds shall be returned to the judgment debtor upon notice from said judgment debtor.**
- (c) Any hearing required by the court shall be expedited, shall be held not later than thirty days after the filing of the request for court review, and shall be held upon not less than three days' notice of the hearing to all parties in interest.**

Priority

Committee Comments: Establishes the priority among garnishments. The committee believes this new subsection (b), which is consistent with the proposed revisions to § 525.040 RSMo, to be a codification of existing case law.

Rule 90.04. Effect of Service of Writ of Garnishment and Summons—Priority

- (a) The service of the writ of garnishment and summons attaches the property subject to garnishment in the garnishee's possession or charge or under the garnishee's control at the time the writ of garnishment and summons is served and continuing through the return date of the writ, or in the case of a continuous wage garnishment, until the judgment is paid in full, or until the employment relationship is terminated, whichever occurs first.**
- (b) Writs of garnishment which would otherwise have equal priority shall have priority according to the date of service on the garnishee. If an employee's wages have been attached by more than one writ of garnishment, the employer must**

inform the inferior garnishor of the existence and case number of all senior garnishments.

Interrogatories

Committee Comments: Changes the requirements on the interrogatories.

Rule 90.07. Interrogatories to Garnishee—Answers to Interrogatories—Exceptions—Response

(a) **Interrogatories—Time for [Filing—] Service.** [Prior to the issuance of the summons and writ of garnishment,] The garnishor shall [file] serve written interrogatories asking the garnishee to:

(1) List and describe the property subject to garnishment in the possession, charge, or control of the garnishee, and in the case of a wage garnishment, state the gross amount of earnings, as defined in section 525.030, RSMo, due to the debtor, and the nonexempt portion of such earnings subject to garnishment;

(2) State the last known address of the debtor and the name and last known address of any person, other than debtor, whom the garnishee knows claims or may claim an interest in or to the property subject to garnishment; [and]

(3) If the garnishee is a bank or other financial institution, state whether at the time the writ of garnishment was served or at any subsequent time did the debtor have funds on deposit in an account in which all funds are:

(A) Deposited electronically on a recurring basis, and

(B) Reasonably identified as being funds on deposit that are exempt from garnishment pursuant to section 513.430.1(10)(a), (b), or (c), RSMo; and, if so, identify each account, state the reason for the believed exemption, and identify the entity electronically depositing those funds;

(4) **Identify the existence and case number of all senior garnishments and inform the garnishor upon the release, satisfaction, or termination of a senior garnishment; and**

(5) **Notify the garnishor upon termination of the judgment debtor's employment.**

The interrogatories shall be served simultaneously with the summons and writ of garnishment. In the case of service other than by certified mail, the garnishor shall provide the interrogatories to the serving officer after the issued summons and writ have been returned to the garnishor by the court.

(b) **Answer to Interrogatories—Time [for Filing] to Serve.** The garnishee shall [file and] serve verified answers to the interrogatories on the garnishor during the ten days immediately after the return date of the writ, or in the case of a continuous wage garnishment, within twenty days from the date on which the garnishee is served with the writ.

(c) **Exceptions to Answers to Interrogatories—Time for Filing.** The garnishor shall file and serve on the garnishee any exceptions to the interrogatory answers asserting any objections to the answers and asserting all grounds upon which recovery is sought against the garnishee.

(1) The exceptions shall be filed within the later of:

- (A) [ten] **Twenty** days after service of the answers, or
- (B) 20 days after the return date of the writ.

(2) **In the case of a continuous wage garnishment, the exceptions shall be filed no later than twenty days after service of the answers.**

The garnishee's answers to interrogatories are conclusively binding against the garnishor if the garnishor does not timely file exceptions to the interrogatory answers.

(d) **Response to Exceptions—Time for Filing.** Within [ten] **twenty** days after service of the exceptions, the garnishee may file a response thereto.

(e) **Filing. Interrogatories and answers to interrogatories under this Rule shall not be filed with the court except upon court order or contemporaneously with exceptions placing the interrogatory answers in issue. However, both when the interrogatories and answers are served, the party serving them shall file with the court a certificate of service. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the document, e.g., first interrogatories or answers to second interrogatories, and the signature of the serving party or attorney.**

Payment of Garnishment

Committee Comments: Creates an option that garnishment funds may be paid directly to the attorney. Removing garnishment payments from the court system would significantly reduce the workload imposed on our circuit clerks. Routing garnishment payments directly to attorneys is a common practice. Members of the Committee are specifically aware of the following states that do so:

- Kentucky—CR Rule 69.02
- Illinois—735 ILCS 5/12-808
- Arkansas—No explicit citation available, but known from experience
- Arizona—A.R.S. § 12-1598.10
- New Mexico—NMRA, Rule 1-065.2

The overwhelming majority of the garnishments filed in this state are done so by collection firms who have high volume practices that require efficiency and professionalism. These attorneys report to sophisticated clients who closely monitor all remittances for accuracy thus greatly reducing the risk of inappropriate attorney conduct. While admittedly there is still a risk of negligent or intentional misconduct, attorneys would be subject to civil remedies as well as attorney discipline. If this procedure results in discovering and disciplining attorneys who misappropriate funds and thus preventing other undiscovered misconduct, it could be advantageous to our judicial system. Rules and procedures should be created for attorneys, parties and courts to follow.

Rule 90.10. Discharge of Garnishee—Judgment in Garnishment

(a) **Subject to subsection (b)**, if the garnishee admits in its answers to interrogatories that any property subject to garnishment is in the garnishee's possession, the garnishee, without further order of the court, shall pay or deliver such property into court no later than ten days after the return date of the writ of garnishment or levy, **or in the case of a continuous wage garnishment, no later than ten days after the end of each pay period subject to the garnishment.**

Timely payment or delivery of such property into court discharges the garnishee from further liability on account of the property subject to garnishment so paid or delivered.

(b) **In cases where the garnishor is represented by counsel and has paid the fee provided in section 488.XXX, RSMo, the garnishor may request that payments be made directly to its attorney. In that instance, if the garnishee admits in its answers to interrogatories that earnings subject to garnishment are in the garnishee's possession, the garnishee, without further order of the court, shall pay or deliver such property directly to the attorney for the party on whose behalf the order of garnishment was issued no later than ten days after the return date of the writ of garnishment or levy, or in the case of a continuous wage garnishment, no later than ten days after the end of each pay period subject to the garnishment. Timely**

payment or delivery of such property to the attorney discharges the garnishee from further liability on account of the property subject to garnishment so paid or delivered.

(c) [(b)] If the garnishor files exceptions to the garnishee's answers to interrogatories or if a third party has intervened as provided by Rule 90.09, the court or jury shall determine all controverted issues raised by garnishor's exceptions to the garnishee's answers to interrogatories, the garnishee's response thereto, and any claim asserted by a third party who has intervened. The court shall enter judgment in accordance with the findings of the court or jury and shall order that any property not previously delivered to the officer, [or] the court, **or to the attorney for the party on whose behalf the order of garnishment was issued**, be delivered to the officer, **the attorney**, or paid into court within such time as the court shall direct. If the property is not delivered to the officer, **the attorney**, or paid into court within such time, the court may enter judgment against the garnishee for the value of the property.

Disbursement

Committee Comments: Corrects a reference to the rule.

Rule 90.11. Disbursement

When a trial of issues under Rule 90.10[(b)] **(c)** is not required, property paid or delivered into court under Rule 90.10(a) shall be disbursed to the garnishor by the clerk, less costs, within ten days and without order of the court if the garnishee has not requested an allowance under Rule 90.12(a). If the garnishee has requested an allowance under Rule 90.12(a), the property paid or delivered into the court, less costs and allowances, shall be disbursed to the garnishor by the clerk within ten days after the court has determined the allowance to be awarded the garnishee.

The clerk shall not disburse property paid or delivered into court without order of the court when a trial is required by Rule 90.10[(b)] **(c)**.

Allowance

Committee Comments: Establishes a standard allowance for garnishments.

Rule 90.12. Costs and Allowances

(a) Allowance to Garnishee if Interrogatory Answers are Not Excepted to or Denied.
If by interrogatory answers, not excepted to or denied, it appears that the garnishee has property subject to garnishment, [the court, upon motion by the garnishee, shall allow] the garnishee [a reasonable amount] **may deduct a one-time sum not to exceed twenty dollars, or the fee previously agreed upon between the garnishee and judgment debtor where the garnishee is a financial institution**, for the trouble and expense of

answering and withholding, [including attorney's fees,] to be paid out of the property subject to garnishment. Such fee shall not be a credit against the court-ordered judgment and shall be collected first. The garnishee may file a motion with the court for additional costs, including attorney fees, reasonably incurred in answering the interrogatories in which case the court may make such award as it deems reasonable. The motion shall be filed on or before the date the garnishee makes payment, or delivers property subject to garnishment into court.

(b) **Allowance to Garnishee if Garnishor Does Not Recover Judgment Against Garnishee.** If the garnishor filed exceptions to the garnishee's interrogatory answers but does not obtain judgment against the garnishee, all of the costs attending such garnishment shall be taxed against the garnishor. The court in such a case [shall] may render judgment in favor of the garnishee and against the garnishor for an amount sufficient to reimburse [indemnify] the garnishee for time and expense, including attorney's fees reasonably incurred.

(c) **Allowance to Garnishee in Appellate Court.** A garnishee claiming an allowance in an appellate court shall do so pursuant to Rule 84.21.

Sequestration

Committee Comments: Removes reference to writ of sequestration and eliminates a separate process for writ of sequestration.

Rule 90.15. Garnishment of Wages—Notice of Wage Exemption Statute Required
No notice, summons, or writ of garnishment [, or sequestration of wages] issued or served under sections 525.010 to 525.310, RSMo, shall attach or purport to attach any wages in excess of the amounts prescribed in subsection 2 of section 525.030, and each such notice, summons, or writ shall have clearly and legibly reproduced thereon the provisions of subsections 2, 5 and 6 of section 525.030.

Rule 90.16. Compensation of State and Municipal Employees Subject to Writ of Garnishment [Sequestration]

(a) The pay of any officer, appointee or employee of the state of Missouri, or any municipal corporation or other political subdivision of the state, shall be subject to garnishment to the same extent as in any other garnishment. All garnishments against such employees shall proceed in the same manner as any other garnishment, except as provided in subsection (b) of this Rule.

(b) Service of legal process to which a department, municipal corporation, or other political subdivision of the state is subject under this section may be accomplished by certified mail, return receipt requested, or by personal service, upon—

1. the appropriate agent designed for receipt of such service of process; or

2. the head of such department, municipal corporation, or other political subdivision of the state, if no agent has been so designated.

[**Writ of Sequestration—Application for Issuance.** When an execution is requested on a judgment rendered against an officer, appointee, or employee of the state of Missouri or any municipal corporation or other political subdivision of the state, the clerk shall issue a writ of execution, which shall constitute and serve as a writ of sequestration. The writ shall be directed to the sheriff or other officer authorized to execute writs in the county in which the paying, disbursing, or auditing officer may be found with instructions to the sheriff or executing officer to take into possession any and all moneys, checks, drafts, warrants, vouchers, or other evidence of indebtedness for salary, wages, fees, or earnings for services rendered by the judgment debtor then due and payable, and which shall thereafter become due and payable, from the date of the writ to the return day thereof. The sheriff or other officer to whom the writ is directed shall serve a true copy thereof upon the paying, disbursing, or auditing officer named therein, which shall have the effect of attaching in the sheriff's or officer's hands any and all moneys, checks, drafts, warrants, vouchers, or other evidences of indebtedness then due and payable, and which shall thereafter become due and payable, from the state or such municipal corporation or other political subdivision of the state to the judgment debtor from and after the date of the service of the writ to the return day thereof.

(b) Duties of Officers—Fees—Exemptions. The officer serving the writ shall endorse thereon the day and date the same was received, shall take into possession, as the same shall become due to the judgment debtor, such moneys, checks, drafts, warrants, vouchers, of other evidences of indebtedness, and shall issue a receipt to the paying, disbursing, or auditing officer therefor, and shall endorse, in the name of the judgment debtor, any and all such checks, drafts, warrants, vouchers, or other evidences of indebtedness delivered under the writ. The proceeds thereof less any amount exempt to the judgment debtor under the exemption statutes of this state, or so much thereof as shall be necessary therefor, shall be applied to the payment of the judgment debt, interest, and costs in the same manner as in the case of garnishment under execution.

The sheriff or other officer serving the writ shall make a return to the writ showing the manner of serving it. The sheriff or officer shall be allowed the same fees therefor as provided for levy of execution. The writ shall be returnable in the same manner as the execution issued out of the court in which the judgment was rendered.

Nothing herein shall deprive the judgment debtor of any exemptions permitted under the exemption laws of this state, and the exemptions may be claimed to the sheriff or other officer serving the writ at any time on or before the return date of the writ in the manner provided under the exemption laws of this state it shall be the duty of the sheriff or other officer serving the writ, at the time of the service thereof, to apprise the judgment debtor of the debtor's exemption rights, either in person or by registered or certified mail directed to the judgment debtor at the last known address.

(c) The procedure in this Rule 90 for determining liability on garnishments shall be applicable in the determination of liability on sequestrations.]

Quashing a writ

Committee Comments: Sets out the procedure for quashing a writ.

Rule 90.18. Staying, Quashing, or Vacating Writ

At any time after service of the summons and writ of garnishment, but not later than ninety days after any specific payment shall have been made by the garnishee to the garnishor with respect to that specific payment, any person against whom such writ has been issued may file with the issuing court a petition setting forth good cause why such garnishment ought to be stayed, set aside, or quashed. Reasonable notice of the time of the hearing on the petition shall be given to all interested parties.

Reporting the judgment balance

Committee Comments: Requires the periodic reporting of the judgment balance to the court.

Rule 90.19. Reporting Judgment Balance—Payment on the Record

(a) A judgment creditor may, prior to the expiration of a judgment, file a statement of judgment balance with the court, and any payment referenced in the statement shall be deemed a payment on the record for the purposes of section 516.350, RSMo. Copies of the statement shall be served by ordinary mail on the judgment debtor. A statement filed pursuant to this subsection shall renew the six month filing requirement of subsection (b), if applicable.

(b) In the case of a continuous wage garnishment, or in any case in which the garnishor has elected to have payments made directly to its attorney pursuant to Rule 90.10(b), the garnishor shall file with the issuing court a statement of judgment balance, which shall indicate all payments received by the garnishor within the preceding six months and the remaining unsatisfied portions of the judgment, which may include all unsatisfied post-judgment interest and costs. The statement shall be filed not later than fifteen days after the close of each such six-month period. The statement shall be filed with the issuing court beginning six months after issuance of the garnishment and shall continue every six months thereafter until the garnishment is satisfied or no longer effective. Copies of the statement shall be served by ordinary mail on the garnishee and judgment debtor. In the case of garnishment other than a continuous wage garnishment in which the garnishor has elected to have payments made directly to its attorney pursuant to Rule 90.10(b), a

statement of judgment balance need not be filed if the garnishor files a new garnishment in the same case and against the same defendant prior to the date the statement would have been required to be filed with the issuing court.

(c) In the event a garnishor fails to file a statement of judgment balance as provided in subsection (b) of this rule, the court shall, upon its own motion or that of any party or junior garnishor, terminate the garnishment.

(d) Any party may file with the issuing court a motion for accounting of judgment balance up to thirty days after satisfaction of the judgment.